

1 State of New Hampshire Banking Department

2
3 In re the Matter of:) Case No.: No. 07-019
4 Banking Department,) Order to Show Cause
5 Petitioner,) Amended
6 and)
7 First Guarantee Mortgage, LLC, d/b/a)
8 Saratoga First Guarantee Funding,)
9 Respondent)

10
11 Amended Notice of Order

12
13 Having received and reviewed a Motion to Amend and any response thereto, it
14 is hereby

15
16 Ordered,

- 17 1. The motion to amend is granted.
18 2. The staff petition of January 30, 2007 is hereby stricken.
19 3. The staff petition of March 30, 2007 is hereby incorporated and made
20 a part of the Order to Show Cause.
21 4. The final paragraph of the Order to Show Cause is amended to show
22 the fine for late submission of complaint response as \$7,400.00.
23 5. Respondent shall have thirty days from receipt of this amended Order
24 to request a hearing or reach settlement.
25 6. All other provisions of the Original Order to Show Cause remain in
full force and effect.

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SIGNED

Dated: 4/2/07

/S/
Peter C. Hildreth
Bank Commissioner

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In re the Matter of:)	Case No.: No. 07-019
)	
Banking Department,)	Order to Show Cause
)	
Petitioner,)	
)	
and)	
)	
First Guarantee Mortgage, LLC, d/b/a))	
)	
Saratoga First Guarantee Funding,)	
)	
Respondent)	
)	

Now comes petitioner, James Shepard, and respectfully states as follows:

- Wherefore, petitioner respectfully prays the Commissioner:

- A. Strike the staff petition of January 30, 2007 and insert in its place the staff petition of March 30, 2007; and
- B. Amend the Order to reflect the prayed for relief contained in

the staff petition of March 30, 2007; and

C. Grant such other relief and take such other action as is just

and in the public interest,

SIGNED,

Dated: 3/30/07

/S/
James Shepard
Staff Attorney

1 **Unfair or Deceptive Acts (4 Counts)**

2 9. Paragraphs 1-8 are realleged as if fully set forth herein.

3 10. In a Good Faith Estimate dated on October 7, 2005 FGM represented the
4 loan origination fee to be \$8,346.00 and disclosed a possible Mortgage
5 Broker Compensation (also known as a Yield Spread Premium or YSP) of 1-
6 4% without disclosing a dollar figure that range represents. The GFE
7 identified a 2/28 adjustable rate mortgage with a 5 year pre-payment
8 penalty.

9 11. Simultaneously FGM provided a Truth in Lending statement (TIL) to the
10 consumer. This TIL disclosed a steady monthly payment over the life of
11 the loan. The TIL did not have the Variable Rate Feature box checked.
12 The TIL did not indicate the existence of a pre-payment penalty. The
13 TIL disclosed an APR which was less than the interest rate identified
14 on the GFE and therefore clearly erroneous.

15 12. FGM provided another TIL to consumer on or about October 25, 2005.
16 This TIL had all the same errors as the initial TIL.

17 13. Both TIL statements grossly underestimate the APR at 7.324% and 8.666%
18 respectively when the true APR for the loan was 11.190%.

19 14. Regulation Z (12 C.F.R. § 226 et seq.) requires creditors to disclose
20 an Annual Percentage Rate by using a specified formula. The purpose of
21 the APR is to be able to compare loan offers. A materially incorrect
22 APR statement damages a consumer's ability to adequately assess
23 different loan offers.

24 15. FGM's issuance of a materially incorrect TIL statement was an unfair
25 and deceptive act which induced the consumer to believe the loan would
26 cost less than it did.

27 16. In its October 7 disclosure package FGM disclosed an origination fee of
28 \$8,346.00 both through the aforementioned GFE and the Mortgage
29 Brokerage Business Contract (on that document called a brokerage fee).

1 17. At closing an origination fee of \$10,292.00 was charged to the
2 consumer.

3 18. On questioning of the reasons for this petitioner replied that "[o]ne
4 of the first documents which would have been sent to the [consumer] was
5 the Mortgage Broker and Mortgage Origination Agreements which clearly
6 indicate the amount in advance of what the services would cost, which
7 was exactly as it appeared later on the HUD-1." Since this clearly does
8 not comport with the facts one can presume they are either unaware of
the change or unable to explain it.

9 19. FGM's issuance of a materially incorrect Mortgage Brokerage Business
10 Contract was an unfair and deceptive act which induced the consumer to
11 believe the loan would cost less than it did.

12 20. The consumer states the purpose of the loan was to obtain cash out at
13 refinancing to do home improvement. As shown in the application
14 printed out and sent with the October 7 disclosures, FGM was aware of
this purpose.

15 21. The initial GFE prepared for consumer indicated consumer would receive
16 in excess of \$9,000 at closing. The consumer received \$612.92 at
17 closing as a result of various factors including the aforementioned
18 increase in origination fees and prepayment penalties on their
19 outstanding mortgage obligations. FGM knew about the prepayment
20 penalties and their impact on the cash out at closing.

21 22. FGM's failure to advise the consumer in a timely manner that the
22 purpose of the transaction would be frustrated by their individual
circumstances was an unfair and deceptive act.

23 23. The consumers were expecting an interest rate of 7.24%. The initial
24 disclosure packet advised them the interest rate was expected to be
25 7.95%

24. The interest rate at closing was 8.19%.

1 25. The Respondent indicates the increase in interest rate may due to
2 several factors but gave no concrete explanation of the increase in
3 this case.

4 26. The consumer qualified for a rate of 7.99% with a 1.5% YSP.

5 27. The loan officer chose an interest rate of 8.15% with a 2% YSP.

6 28. As seen above, since the origination fee increased the increase in YSP
7 does not offset up-front loan costs but only represents an added burden
8 in interest costs to the consumer.

9 29. Respondent has consistently claimed in its responses to the Department
10 that the YSP is not paid by the borrower and therefore not a cost of
11 the loan. It is reasonable to conclude they also told the consumer
12 this misinformation.

13 30. FGM's upcharging of the rate without a corresponding decrease in other
14 compensation to the broker and in light of its misinformation as to the
15 reasons for the interest rate constitutes an unfair and deceptive act.

16 **Failure to comply with federal law (2 Counts)**

17 31. Paragraphs 1-30 are realleged as if fully set forth herein.

18 32. The Real Estate Settlement Procedure Act ("RESPA", 24 CFR §3500.7)
19 requires a broker to provide a good faith estimate within three days of
20 application. As previously noted the first disclosure was dated October
21 7 and delivered to consumer October 14, well after the August 17
22 application.

23 33. RESPA requires each charge that will be incurred by the borrower to be
24 disclosed as a dollar amount or range. As previously noted both GFE's
25 improperly disclosed only a percentage range of the YSP.

34. Respondent received this consumer complaint on June 21, 2006. A
reminder letter noting the response was already late was received
September 5, 2006.

35. Their acknowledgement and request for waiver of the fine for late

1 submission was dated September 25, 2006 and received on or before
2 September 29, 2006. By letter this petitioner advised a waiver could
3 not be granted after the due date and fines continued to accrue.

4 36. An initial response was received on October 6, 2006. By certified
5 letter this petitioner indicated the response was inadequate, that
6 fines continued to accrue, and requested the entire loan file. That
7 letter was received October 18, 2006.

8 37. In November this petitioner by certified letter advised Respondent
9 their license for 2007 would not issue until they responded in full to
10 this consumer complaint.

11 38. On January 3, 2007 this petitioner by certified letter received January
12 8, 2007 advised respondent that their license was expired, that their
13 response was still outstanding and failure to respond by January 18th
14 would result in enforcement action.

15 39. The Response was received on January 17, 2007.

16 40. The response was 148 days late.

17 ISSUES OF LAW

18 II. The staff of the Department, alleges the following issues of law:

19 41. Paragraphs 1-40 are realleged as if fully set forth herein.

20 42. The Department has jurisdiction over the licensing and regulation of
21 persons engaged in mortgage banker activities pursuant to NH RSA 397-
22 A:3.

23 43. RSA 397-A:15-a requires a response within sixty days of receipt of a
24 consumer complaint, and dictates a \$50 per day fine thereafter.

25 44. RSA 397-A:16 provides that licensees may only charge fees and points
for services rendered.

1 45. RSA 397-A:16 requires licensees to disclose all fees within three
2 business days of receipt of a loan application.

3 46. RSA 397-A:17 requires licensees to comply with applicable federal law.

4 47. RSA 397-A:21 IV provides that any person who, either knowingly or
5 negligently, violates any provision of Chapter 397-A, may upon hearing,
6 and in addition to any other penalty provided for by law, be subject to
7 an administrative fine not to exceed \$2,500, or both. Each of the acts
8 specified shall constitute a separate violation, and such
9 administrative action or fine may be imposed in addition to any
10 criminal penalties or civil liabilities imposed by New Hampshire
11 Banking laws.

12 48. RSA 383:10-d gives the Commissioner exclusive jurisdiction to order
13 restitution in cases involving unfair and deceptive trade practices or
14 violations of the Chapter.

15 **RELIEF REQUESTED**

16 The staff of the Department requests the Commissioner take the following
17 Action:

- 18 1. Find as fact the allegations contained in section I of this
19 petition;
- 20 2. Make conclusions of law relative to the allegations contained
21 in section II of the this petition;
- 22 3. Assess fines and administrative penalties in accordance with
23 RSA 397-A:21, for violations of Chapter 397-A, in the number
24 and amount equal to the violations set forth in section II of
25 this petition; and

4. Order restitution on behalf of the consumers harmed in this transaction; and

5. Order Respondent to pay the late response fees of \$7,400.00

6. Order the Respondent to show cause why their license should not be revoked; and

7. Take such other administrative and legal actions as necessary for enforcement of the New Hampshire Banking Laws, the protection of New Hampshire citizens, and to provide other equitable relief.

RIGHT TO AMEND

49. The Department reserves the right to amend this Staff Petition and to request that the Commissioner take additional administrative action. Nothing herein shall preclude the Department from bringing additional enforcement action under RSA 397-A or the regulations thereunder.

Respectfully submitted by:

/s/
James Shepard
Staff Attorney

3/30/07
Date